



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MKB/158632

PRELIMINARY RECITALS

Pursuant to a petition filed May 21, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on July 24, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly denied the Petitioner's application for the Katie Beckett Medicaid Program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. On September 25, 2014 the Petitioner submitted an application for the Katie Beckett Medicaid Program. (DDB file)

3. On April 3, 2014, the DDB sent the Petitioner a notice indicating that they made an appointment for her with a medical consultant on April 22, 2014 at 3:00 p.m. (DDB file)
4. The Petitioner did not keep the appointment. (DDB file; testimony of Petitioner's mother)
5. On May 6, 2014, the DDB sent the Petitioner a notice indicating that her application for benefits was denied. (DDB file)
6. On May 21, 2014, the Petitioner filed a request for reconsideration. (DDB file)
7. On May 23, 2014, the DDB sent the Petitioner a notice, indicating that they made an appointment for her with a medical consultant on June 9, 2014. (DDB file)
8. The Petitioner kept that appointment and on June 10, 2014, the consultant submitted his findings to the DDB. (DDB file)
9. On June 16, 2014, the DDB again denied the Petitioner's application and on June 26, 2014, the DDB forwarded the file to the Division of Hearings and Appeals for review. (DDB file)
10. Petitioner is a 17 year old girl with diagnoses of depression and anxiety with panic attacks; a history of alcohol and pain medication addiction and a history of eating disorders. (DDB file)
11. At the time of the hearing, the Petitioner was in jail, due to unpaid tickets. (Testimony of Petitioner's mother)

DISCUSSION

The petitioner desires to be found eligible for the Katie Beckett Medicaid program. As a condition of eligibility, she must be found "disabled," at the level required for federal SSI eligibility.

I. DEFINITION OF CHILDHOOD DISABILITY.

To be considered a disabled person, an applicant must meet the tests used by the Social Security Administration to determine disability for Supplemental Security Income (SSI) benefits. For SSI purposes, a disabled child must have a medically determinable physical or mental impairment, or combination of impairments, that causes marked and severe functional limitation, and that can be expected to last for at least a year. 20 C.F.R. §416.906. More specifically, 20 C.F.R. §416.911(b) declares:

If you are a child, a disabling impairment is an impairment (or combination of impairments) that causes marked and severe functional limitations. This means that the impairment or combination of impairments:

- (1) Must meet, medically equal, or functionally equal the requirements of the listings, [appendix 1 of Subpart P of 20 C.F.R, Part 404], or
- (2) Would result in a finding that you are disabled under sec. 416.994a ...

[§416.994a pertains to a child who has been previously found to be disabled by DDB]

A sequential process is used to apply these definitions to a specific case. 20 C.F.R. §416.924.

The first test in the sequence is whether the claimant is performing "substantial gainful activity." Because the petitioner is not working, she passes this first test.

The second sequential test is whether the claimant has an impairment or combination of impairments that is “severe.” If the impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, it is not severe. 20 C.F.R. §416.924(c). The Disability Determination Bureau (DDB) has conceded that the petitioner’s impairment is severe, so she passes the second test.

The third sequential test element is the heart of the dispute here. The third test considers whether the child has an impairment(s) that *meets, medically equals, OR functionally equals* in severity any impairment that is listed in Appendix 1 of Subpart P of Part 404 of the regulations (Listings). 20 C.F.R. §416.924(d). DDB determined that the petitioner did not meet this requirement, and that he is therefore not disabled for SSI/MA purposes.

II. THE PETITIONER’S CONDITION DOES NOT *MEET OR MEDICALLY EQUAL* THE LISTINGS AT SECTION 112.

There is a specific section of the Listings – sec. 112. -- that deals with mental health diagnoses; more specifically, Section 112.04 addresses Mood Disorders, such a depression.

Section 112.04 states that mood disorders are, “characterized by a disturbance of mood (referring to a prolonged emotion that colors the whole psychic life, generally involving either depression or elation), accompanied by a full or partial manic or depressive syndrome.”

The required level of severity for these disorders is met when the requirements in **both A** and B are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Major depressive syndrome, characterized by at least five of the following, which must include either depressed or irritable mood or markedly diminished interest or pleasure:
 - a. Depressed or irritable mood; or
 - b. Markedly diminished interest or pleasure in almost all activities; or
 - c. Appetite or weight increase or decrease, or failure to make expected weight gains; or
 - d. Sleep disturbance; or
 - e. Psychomotor agitation or retardation; or
 - f. Fatigue or loss of energy; or
 - g. Feelings of worthlessness or guilt; or
 - h. Difficulty thinking or concentrating; or
 - i. Suicidal thoughts or acts; or
 - j. Hallucinations, delusions, or paranoid thinking;

or

2. Manic syndrome, characterized by elevated, expansive, or irritable mood, and at least three of the following:
 - a. Increased activity or psychomotor agitation; or
 - b. Increased talkativeness or pressure of speech; or
 - c. Flight of ideas or subjectively experienced racing thoughts; or
 - d. Inflated self-esteem or grandiosity; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high potential of painful consequences which are not recognized; or
 - h. Hallucinations, delusions, or paranoid thinking;

or
3. Bipolar or cyclothymic syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently or most recently characterized by the full or partial symptomatic picture of either or both syndromes);

And

- B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

Those sections can be viewed online at www.ssa.gov/disability/professionals/bluebook/112.00-MentalDisorders-Childhood.htm. The medical documentation in the file is somewhat limited and does not support a finding that the Petitioner meets the specific Listing criteria.

I note that the Petitioner's mother testified that she suspects the Petitioner is engaging in drug abuse again. The Petitioner's mother's testimony was based upon information that she received from the Petitioner's roommate's mother, that the Petitioner got into an altercation with her friend which resulted in police contact. Petitioner's mother was told that the Petitioner was subjected, by police, to a preliminary breath test with negative results. However, Petitioner's mother has not witnessed recent substance abuse by the Petitioner and the Petitioner reported to the medical consultant and a physician at Aurora that she has not used alcohol or drugs in several months.

It should also be noted that that Petitioner reported a history of eating disorders, but she also reported to the physician from Aurora that her symptoms were in remission.

The next question is whether the Petitioner *functionally equals* an appropriate Listing standard.

III. THE PETITIONER'S CONDITION DOES *FUNCTIONALLY EQUAL* THE SECTION 112 LISTINGS.

The Listings describe impairments that are significant enough to cause "marked and severe" functional limitations. This phrase is a term of art in children's disability rules. In general, a child's impairment(s) is of "listing-level severity" if it results in "marked" limitations in two broad areas of functioning, or "extreme" limitations in one such area. 20 C.F.R. §416.925.

"Marked" and "extreme" limitation are defined at 20 C.F.R. 416.926a(e). Marked limitation means, when standardized tests are used as the measure of functional abilities, a valid score that is two standard deviations below the norm for the test (but less than three standard deviations). Or, for children from age three to age eighteen, it means "more than moderate" and "less than extreme." Expressed another way, a marked limitation seriously interferes with a child's day-to-day functioning. In comparison, "extreme" limitation means a score three standard deviations below the norm or, for children age three to age eighteen, no meaningful function in a given area. See 20 C.F.R. §416.926a(e)(3).

The SSI rule identifies six domains to be reviewed: (1) Acquiring and using information, (2) Attending and completing tasks, (3) Interacting and relating with others, (4) Moving about and manipulating objects, (5) Caring for yourself, and (6) Health and physical well-being. 20 C.F.R. §416.926a(b)(1). Reviewing the June 10 2014 psychological report from the DDB medical consultant, it appears that while the petitioner has limitations in multiple domains, she does not have a marked or extreme limitation in any domain. On the contrary, the report indicates the Petitioner answered questions appropriately and that she scored in the average to low average range of various tests that measured verbal comprehension, reasons, working memory, processing, reading spelling and arithmetic. The report further indicates the Petitioner is able to take care of her basic needs and can perform routine daily chores.

Based upon the foregoing, it is found that the Petitioner does not meet the legal definition of a child with a disability for Katie Beckett MA purposes at this time.

Petitioner should note that if additional medical information becomes available, she can reapply for benefits.

CONCLUSIONS OF LAW

The DDB correctly denied the Petitioner's application for the Katie Beckett Medicaid Program.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

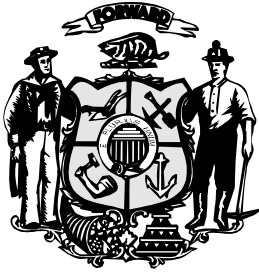
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of August, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 1, 2014.

Bureau of Long-Term Support
Division of Health Care Access and Accountability